

The Honorable Benjamin H. Settle

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE GEO GROUP, INC.,

Plaintiff,

v.

JAY R. INSLEE, in his official capacity as
Governor of the State of Washington; ROBERT
W. FERGUSON, in his official capacity as
Attorney General of the State of Washington,

Defendants.

No. 3:23-cv-05626-BHS

**THE GEO GROUP INC.'S NOTICE OF
DEFENDANTS' RELATED STATE
CASE**

On December 21, 2023 Defendants filed “notice” (Dkt. 31) of the filing of the *State of Washington, Department of Health v. The GEO Group, Inc.*, No. 23-2-04215-34, in Thurston County Superior Court on December 19, 2023 (“State Action”). In the State Action the Washington Department of Health’s (“DOH”) seeks an order from the State court compelling GEO to permit DOH access to inspect the Northwest ICE Processing Center (“NWIPC”) and conduct investigations of complaints pursuant to HB 1470, § 3. In that “notice” filed with this Court the Defendants make two fundamentally false assertions. First, the Defendants assert that “GEO” refused DOH access to the NWIPC to perform inspections and investigations pursuant to HB 1470. (Dkt. 31 at 1). As clearly noted in GEO’s SECOND UPDATED DECLARATION

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OF BRUCE SCOTT IN SUPPORT OF THE GEO GROUP'S MOTION FOR PRELIMINARY INJUNCTION, "ICE directed GEO to deny DOH" access pursuant to HB 1470 (Dkt. 30-1, ¶¶ 6, 8). As a result, the Defendants' assertion in the "notice" that *GEO is denying DOH access* to the NWIPC is fundamentally incorrect and misleading.

Second, Defendants falsely assert that "efforts to inspect Northwest ICE Processing Center—including now seeking judicial relief to allow it to inspect—do not implicate any of the provisions of HB 1470 that GEO challenges as allegedly contrary to federal law." (Dkt. 31 at 1). GEO's Complaint unmistakably and explicitly challenges the constitutionality of all sections and provisions of HB 1470, including the inspection provisions of HB 1470 Section 3:

25. HB 1470 Section 3 grants broad new rule making, inspection, investigation, and testing powers over the NWIPC to the Washington Department of Health and the Washington Department of Labor and Industries...

* * *

73. HB 1470 is unconstitutional and invalid as applied to GEO's provision of detention services at the NWIPC on behalf of ICE because it directly regulates the physical and operational requirements of its contracted facility. *United States v. Washington*, 142 S.Ct. 1976 (2022); *Boeing Co. v. Movassaghi*, 768 F.3d 832 (9th Cir. 2014).

* * *

83. HB 1470 is unconstitutional and invalid as applied to GEO's provision of detention services at the NWIPC on behalf of ICE because it impermissibly discriminates against the federal government and its contractors. *United States v. Washington*, 142 S.Ct. 1976 (2022).

* * *

95. HB 1470 is unconstitutional and invalid as applied to GEO's provision of detention services at the NWIPC on behalf of ICE because it is preempted by Congress' occupation of the entire field of alien detention pending removal.

* * *

99. HB 1470 as a whole constitutes an impermissible obstacle to Congress' purpose for creating a uniform federal framework for the detention of aliens pending removal.

Dkt. 1, ¶¶ 25, 73, 83, 95, 99. GEO's Motion for Preliminary Injunction ("Motion for PI") (Dkt. 8) similarly notes:

Pursuant to HB 1470 Section 3, DOH is authorized to immediately conduct unannounced inspections, investigate complaints, and conduct various testing. If

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GEO complies with all the requirements in HB 1470 it will be in direct violation of various contractual obligations under the Current federal NWIPC Contract. Martin Decl. ¶ 13. Those violations could result in reductions in the contract price, or findings of breach of contract that could support ICE's termination of the Current federal NWIPC Contract. Id. ¶ 17.

* * *

Allowing 50 state legislatures and an untold number of state agencies to dictate their own preferred requirements, standards, and corresponding inspection and enforcement regimes applicable to alien detention would result in a state-by-state patchwork of requirements that creates an obstacle to the Congressional objective of implementing a uniform set of requirements tailored to the unique purposes of federal alien detention.

Dkt. 8 at pp. 28-32; 28-32. Accordingly, Defendants' current State Action seeks to undercut and displace this Court's consideration of central issues squarely and explicitly presented in GEO's Complaint and pending Motion for PI.

DATED this 26th day of December, 2023.

I certify that this memorandum contains **649** words, in compliance with the Local Civil Rules

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